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August 22, 2014

United States, et al. v. American Express, et al.
No. 10-cv-04496-NGG-RER (E.D.N.Y.)

Dear Judge Garaufis:

I write on behalf of the parties regarding the Rule 1006 summary exhibits addressed on the record on August 18, 2014. At that time, the Court stated that it would keep the trial record open for the limited purpose of addressing these summary exhibits. The parties have since conferred and have reached agreement as to the admissibility of all but one of these exhibits.

Enclosed is a stipulation relating to the exhibits that the parties agree are admissible as summaries of voluminous data under Federal Rule of Evidence 1006. The exhibits are attached to the stipulation as Exhibits A and B. As indicated in the stipulation, the Rule 1006 exhibits attached as Exhibit A were also used by Professor Michael L. Katz as demonstrative exhibits during his trial testimony on July 29, July 30 and August 18, 2014; the Rule 1006 exhibits attached as Exhibit B were also used by Professor B. Douglas Bernheim as demonstrative exhibits during his trial testimony on August 13 and 14, 2014. Because many of these summary exhibits reflect highly confidential data, we have filed the stipulation and accompanying exhibits under seal.

The exhibit as to which the parties have not reached agreement was also used by Professor Bernheim as a demonstrative exhibit during his trial testimony. American Express seeks to move that exhibit into evidence as a Rule 1006 summary of the data cited in the exhibit, and the Government has objected to its admissibility for this purpose. Subject to the Court's preference, the parties propose to address the

admissibility of this exhibit through briefing not to exceed three (3) pages in length. American Express would file its brief on Monday, August 25, 2014, and the Plaintiffs would file their brief on Tuesday, August 26, 2014.

Respectfully,

Evan R. Chesler 
Evan R. Chesler

Hon. Nicholas Garaufis
U.S. District Court
Eastern District of New York
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Copies to:

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BY CM/ECF